

ESTTA Tracking number: **ESTTA633013**Filing date: **10/15/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	SERVALL COMPANY		
Entity	Corporation	Citizenship	MICHIGAN
Address	6761 EAST 10 MILE ROAD CENTER LINE, MI 48015 UNITED STATES		

Attorney information	Linda Monge Callaghan RADER, FISHMAN & GRAUER PLLC 39533 WOODWARD AVE. STE. 140 BLOOMFIELD HILLS, MI 48304 UNITED STATES lem@raderfishman.com, mdf@raderfishman.com, jjp@raderfishman.com Phone:248-594-0600
----------------------	--

Registration Subject to Cancellation

Registration No	3707736	Registration date	11/10/2009
Registrant	Simmons, Lorenzo 2353 Culbreth Rd Fayetteville, NC 28312 UNITED STATES		

Goods/Services Subject to Cancellation

Class 037. First Use: 2000/03/05 First Use In Commerce: 2000/03/05
All goods and services in the class are cancelled, namely: Air conditioning apparatus, heating equipment, and kitchen appliance repair services

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	SERVALL		
Goods/Services	Distributorship services in the field of appliances, appliance parts and accessories, and heating, cooling and ventilation products, parts and accessories and other related services.		

Attachments	R1269608.PDF(128451 bytes)
-------------	-----------------------------

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Linda Monge Callaghan/
Name	Linda Monge Callaghan
Date	10/15/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SERVALL COMPANY,)	
)	
Petitioner,)	
)	Cancellation No. _____
v.)	Registration No. 3,707,736
)	Mark: SERVALL SERVICES,INC.COM
LORENZO SIMMONS,)	
)	
Registrant.)	
_____)	

PETITION FOR CANCELLATION

Petitioner, Servall Company, a Michigan corporation, at 6761 East 10 Mile Road, Center Line, Michigan 48015 ("Petitioner"), believes that it has been and will continue to be damaged by U.S. Registration No. 3,707,736 for the mark "SERVALL SERVICES,INC.COM" ("Registration"), by Lorenzo Simmons, an individual, at 2353 Culbreth Road, Fayetteville, North Carolina 28312 ("Registrant"), and hereby petitions to cancel the same on the grounds that: (a) the mark of the Registration is likely to cause confusion, or to cause mistake or to deceive with respect to Petitioner's prior use of its mark SERVALL and its trade name Servall Company (collectively, "Petitioner's SERVALL Mark and Name"); and (b) the Registration dilutes the distinctiveness of Petitioner's SERVALL Mark and Name by tarnishing and by blurring the distinctiveness of the same.

As grounds for cancellation, Petitioner states as follows:

1. Petitioner provides distributorship services in the field of appliances, appliance parts and accessories, and heating, cooling and ventilation products, parts and accessories and other related services ("Petitioner's Services"). Petitioner is one of the largest distributors in its field in the United States.

2. In connection with Petitioner's Services, Petitioner has used and continues to use Petitioner's SERVALL Mark and Name in commerce, certain of such services having been provided under such name and mark in commerce since at least as early as 1946.

3. As a result of the quality of Petitioner's Services and the extensive promotion of such services in association with Petitioner's SERVALL Mark and Name, the public and the trade have come to recognize the mark and name as identifying Petitioner and its services. Petitioner's SERVALL Mark and Name have become symbols of Petitioner, its quality services and its goodwill.

4. On November 10, 2009, the United States Patent and Trademark Office (the "Office") granted the Registration, reciting "*air conditioning apparatus, heating equipment, and kitchen appliance repair services*," in Class 37 and a date of first use anywhere and first use in commerce of March 5, 2000.

5. Prior to the October 13, 2008 filing date of the application that resulted in the Registration and prior to Registrant's March 5, 2000 claimed date of first use and date of first use in commerce, Petitioner used Petitioner's SERVALL Mark and Name.

6. The mark of the Registration is highly similar to Petitioner's SERVALL Mark and Name. In fact, Petitioner's SERVALL mark is wholly subsumed by the mark of the Registration.

7. Further, the services covered by the Registration are at least similar and related to Petitioner's Services and would be marketed to the same class of customers through the same channels of trade as Petitioner's Services.

8. In view thereof, purchasers and others are likely to mistakenly assume that the services covered by the Registration originate from, are sponsored by or are in some way associated with Petitioner. The mark of the Registration so resembles Petitioner's SERVALL Mark and Name as to be likely to cause confusion, or to cause mistake or to deceive. Accordingly, Petitioner has been and is likely to continue to be damaged by the continued registration of the Registration.

9. Moreover, Petitioner's SERVALL Mark and Name are famous. Long before the filing date of the application that resulted in the Registration and any use of the mark of the Registration for the services recited in the Registration, Petitioner's SERVALL Mark and Name became famous.

10. The Registration dilutes the distinctiveness of Petitioner's SERVALL Mark and Name by tarnishing and blurring the distinctiveness of the same.

WHEREFORE, Petitioner believes that it has been and will continue to be damaged by the Registration and requests that the Registration be canceled.

The filing fee for this Petition for Cancellation in an amount of \$300 should be charged to Deposit Account No. 18-0013. Any additional fees required should be charged to the same account.

Dated: October 15, 2014

By: /ss/Linda Monge Callaghan/
Michael D. Fishman
Linda Monge Callaghan
RADER FISHMAN & GRAUER PLLC
Attorneys for Petitioner
39533 Woodward Avenue, Suite 140
Bloomfield Hills, Michigan 48304
Telephone: (248) 594-0600
Facsimile: (248) 594-0610

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Petition for Cancellation* has been served upon Respondent by causing a true and correct copy thereof to be sent to via regular U.S. mail, first class, postage prepaid:

Lorenzo Simmons
2353 Culbreth Road
Fayetteville, North Carolina 28312

Date: October 15, 2014

/ss/Linda Monge Callaghan/
Linda Monge Callaghan